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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058893
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Submission	Motion to Dismiss - Rule 12(b)
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Date	08/07/2014
Attachments	Motion to Dismiss.pdf(282471 bytes) Part 1 Signed Declaration of Cahleb Branch_pdf.pdf(5616429 bytes) Part II Signed Declaration of Cahleb Branch_pdf.pdf(4692167 bytes) Part III Signed Declaration of Cahleb Branch_pdf.pdf(2237484 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

)	
MAYWEATHER PROMOTIONS, LLC,)	
)	
Petitioner,)	
)	Cancellation No: 92058893
v.)	
)	Registration Number: 3565960
BRANCH, CAHLEB, JEREMIAH, LLC.)	
)	
)	
Registrant)	
)	

REGISTRANT'S MOTION TO DISMISS

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Registrant, Branch, Cahleb, Jeremiah, LLC (“Registrant”)¹, by its attorneys, respectfully moves the Board to dismiss all of the claims alleged by Mayweather Promotions, LLC (“Petitioner”) in the Petition for Partial Cancellation, as filed on March 18, 2014, pursuant to Fed. R. Civ. P. 12(b)(6) and Trademark Trial and Appeal Board Manual of Procedure 503.

Petitioner has alleged only two grounds for cancellation of Registrant’s U.S. Trademark Registration Number 3,565,960 for “online retail store services in the field of clothing” in Class 35 for the trademark **MONEY POWER RESPECT ENTERTAINMENT** (the “Registration”), namely, that 1) Registrant has abandoned the mark in connection with these services, with no intent to resume use; and 2) that the Registration was obtained fraudulently.

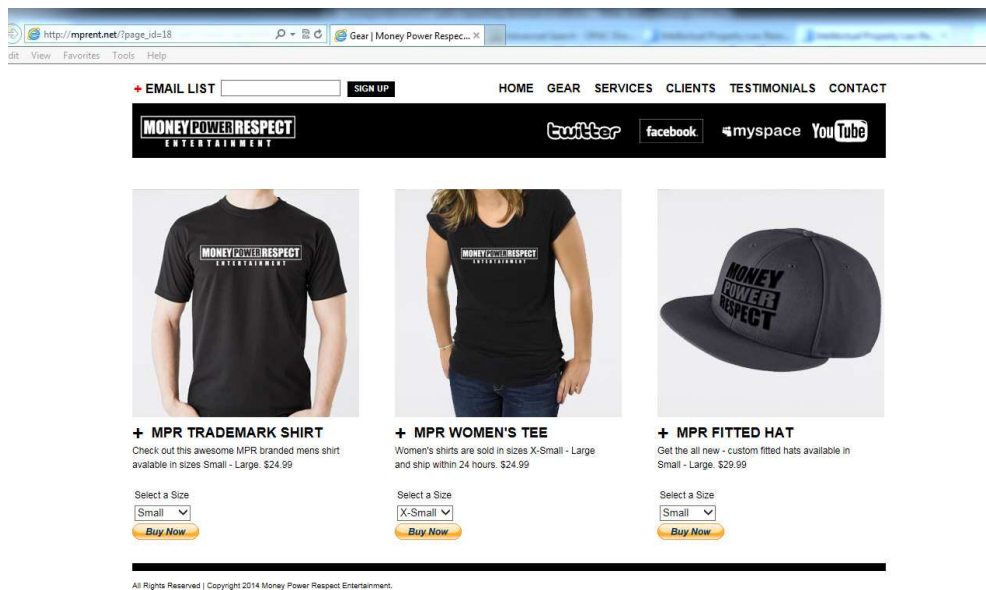
Petitioner’s abandonment claim fails to meet the minimum plausibility standard under Fed. R. Civ. P. 8 (a)(2) and, even if properly pleaded, the abandonment claim cannot be sustained because Registrant is using the **MONEY POWER RESPECT ENTERTAINMENT** mark, never abandoned the mark, and has no intent to abandon the mark in the future.

¹ Registrant has submitted to the Trademark Office a Section 7 Request for Correction to correct the name of the Registrant from Branch, Cahleb, Jeremiah, LLC, to Cahleb Branch, an individual.

Petitioner's fraud claim fails to allege a single fact in support of the claim and therefore utterly fails to meet the heightened pleading requirements of Fed. R. Civ. P. 9 (b).

I. Background

Since 2008, Registrant has owned and operated Money Power Respect Entertainment, LLC ("MPRE") and through that company, has been engaged in the business of managing, promoting, planning, advertising, marketing and scheduling local and nationally known hip-hop artists and entertainers for international shows and Registrant conducts all of this business under the MONEY POWER RESPECT ENTERTAINMENT trademark. See Decl. of Branch, ¶¶1-4.² Registrant uses the trademark MONEY POWER RESPECT ENTERTAINMENT in connection with all aspects of its business. See Decl. of Branch, ¶4. Also, MPRE operates an online retail store under this mark, currently located at www.mprent.net, where it sells clothing, including t-shirts and hats depicted here:



See Decl. of Branch, ¶16.

² Registrant has served its initial disclosures, should the Board decide to convert the Motion to Dismiss the Abandonment Claim into a Motion for Summary Judgment on this issue. See Trademark Rule 2.127(e)(1).

In January 2006, MPRE filed a U.S. Patent and Trademark Office (“PTO”) Application for registration of MONEY POWER RESPECT ENTERTAINMENT as a mark used in connection with services in International Class 035, namely, “management of performing artists and entertainers; advertising, marketing and promotion services; online retail store services in the field of clothing.” In 2009, the PTO duly issued to Registrant a Registration No. 3,565,960 and MPRE has used the MONEY POWER RESPECT ENTERTAINMENT mark since as early as 2008 for all of the services listed in the registration.

In support of the application and in full compliance with the Trademark Manual Examining Procedure, Registrant submitted images of its use of the mark in connection with its promotional services and of a t-shirt with The MySpace page location address printed on the t-shirt, which advertised the MONEY POWER RESPECT ENTERTAINMENT retail store services. See Decl. of Branch, ¶9. The MPRE online store was located originally at the MySpace page and the retail store services on the MySpace page were operational from March 2008 until September 2008 See Decl. of Branch, ¶¶7-10. Around May 2008, Registrant launched his own MPRE website at www.mprent.net and from approximately September 2008 and until September 2011, visitors to The MPRE website were able to purchase clothing via a “click-here-to-purchase” option on the website. See Decl. of Branch, ¶¶11-14. With the exception of less than a month in 2011, when the website was under construction for purposes of redesigning the format of the website, the website has been active. Following the website redesign in September 2011, customers would order t-shirts from the website via an email inquiry to MPRE. Then again in May 2014, Registrant redesigned portions of the MPRE website and added a “buy now” component to the website that allows users to purchase t-shirts directly from the MONEY POWER RESPECT ENTERTAINMENT website. See Decl. of Branch, ¶¶15-17.

The MPRE entertainment business continues to grow and expand and Registrant has invested substantial time and resources into the MONEY POWER RESPECT ENTERTAINMENT brand and as a result, has acquired significant goodwill and recognition in connection with the mark. See Decl. of Branch, ¶¶18-19. Registrant's business is well known in the music industry and has also been featured in news articles, such as in the *Phoenix New Times*. See Decl. of Branch, ¶19.

In 2012, well after Registrant commenced use of the MONEY POWER RESPECT ENTERTAINMENT mark, Petitioner filed its own application for MONEY POWER RESPECT in International Class 25 and, on October 2, 2013, this application was properly refused registration by the USPTO on the basis that it is confusingly similar to Registrant's prior registration of the MONEY POWER RESPECT ENTERTAINMENT mark. This cancellation proceeding was initiated shortly thereafter, when Petitioner filed a petition seeking cancellation of the registration on the grounds of abandonment and fraud.

II. Petitioner's Abandonment Claim Should be Dismissed

A. Petitioner has failed to allege any facts supporting an abandonment claim

In order for a party to properly allege a claim of abandonment of a trademark, the party must allege "ultimate facts pertaining to the alleged abandonment." *Otto International Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1863 (TTAB 2007) (citing *Clubman's Club Corporation v. Martin*, 188 USPQ 455, 456 (TTAB 1975)). A prima facie case of abandonment is established if the facts alleged show at least three consecutive years of non-use or a period of non-use with an intent not to resume use. *Id.*

Failure to plead a prima facie claim justifies a motion to dismiss the claim. As the Supreme Court has held, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*

v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); Fed. R. Civ. P. 8(a)(2). In order for a claim to be plausible, there must be enough “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal* at 678. A sheer possibility is not sufficient. *Id.*

Petitioner has not alleged sufficient facts to support an abandonment claim against the registration. Instead, Petitioner has merely alleged “upon information and belief” that there is no actual use of the MONEY POWER RESPECT ENTERTAINMENT mark in connection with online retail store services in the field of clothing and that there has been no use for three consecutive years. This “sheer possibility” of abandonment is not enough to satisfy the *Iqbal* pleading standard.

The only “fact” cited in the Petition to Cancel is in paragraph 8, which references one of the images that Registrant offered in support of the Registration.³ The image identified by Petitioner depicts a t-shirt with Registrant’s former MySpace page address printed on the t-shirt. From this image, Petitioner purely speculates that the MONEY POWER RESPECT ENTERTAINMENT mark has not been in use for online retail store services for at least three years. However, no facts support this conclusion or any logical connection between the image of the t-shirt and Registrant’s alleged non-use of the MONEY POWER RESPECT ENTERTAINMENT mark for online retail store services. Moreover, Petitioner has speculated that “upon information and belief” Registrant does not have an intent to resume use of its MONEY POWER RESPECT ENTERTAINMENT mark for these services. Again, this conclusion is pure speculation.

³ Petitioner also alleges in Paragraph 9 of the Petition to Cancel that “research” revealed that there was no use of the MONEY POWER RESPECT ENTERTAINMENT mark on the website, but no specific details or facts regarding this research, when it was conducted, or how it was conducted have been alleged or otherwise provided.

Petitioner's abandonment pleading is legally insufficient because it does not "raise a right to relief above the speculative level." *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp 235-236 (3d ed. 2004)). Instead, Petitioner has alleged "upon information and belief" that Registrant has either never used the mark, or stopped using the mark with no intent to resume use. These speculative threadbare recitals of a cause of action are nothing more than conjecture and are wholly unsupported by any fact. *See Iqbal*, 556 U.S. 662, 678. Accordingly, Petitioner's abandonment claim should be dismissed on this ground alone.

B. Petitioner's Abandonment Claim is Futile

Even if Petitioner's abandonment claim was pleaded properly (which it is not), Petitioner cannot prevail on this claim. To prevail on an abandonment claim, a petitioner for cancellation must prove by a preponderance of the evidence that use of the mark has been discontinued without intent to resume use. See 15 U.S.C. §1127; *On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080, 1087 (Fed. Cir. 2000). Yet, Registrant uses the MONEY POWER RESPECT ENTERTAINMENT mark in connection with all services listed in the registration, including the online retail store services for clothing.

This use is clearly evidenced on the MONEY POWER RESPECT ENTERTAINMENT website at www.mprent.net. At no time did Registrant abandon the use of the MONEY POWER RESPECT ENTERTAINMENT mark for these services, and Registrant has no intention to abandon the mark, as evidenced by the ongoing and growing use of the mark. See Decl. of Branch, ¶20. Because of the continued use of the mark, Petitioner's abandonment claim cannot succeed. *See Int'l Imps., Inc. v. Int'l Spirits & Wines, LLC*, 2011 U.S. Dist. LEXIS 156203, *23-24, (S.D. Fl. 2011)(court held that plaintiff failed to show abandonment of mark because plaintiff

could not establish the first element of non-use of the mark or the second element of intent not to resume use because the mark at issue was in use).

III. Petitioner's Fraud Claim Should be Dismissed

Fed. R. Civ. P. 9(b) requires that any claim of fraud must be alleged with particularity. Under this Rule, the pleading must “contain explicit rather than implied expression of the circumstances constituting fraud” *King Automotive, Inc., v. Speedy Muffler King, Inc.*, 667 F.2d 1008, 1010, 212 USPQ 801 (C.C.P.A. 1981). This pleading requirement of Rule 9 is not satisfied if the claim simply lists the substantive elements of fraud without identifying any particularized factual basis for the allegations. *See W.R. Grace & Co. v. Arizona Feeds*, 195 USPQ 670, 672 (Comm'r Pats. 1977).

Proper pleading for a claim of fraud in a PTO application requires sufficient facts stated with particularity to render the claim plausible. “[A] trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.” *In re Bose Corp.*, 91 USPQ2d 1938, 1941-1942 (Fed. Cir. 2009) (holding that an allegation of fraud should not be taken lightly and that “[t]here is no fraud if a false misrepresentation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive.”)

In this proceeding, Petitioner simply recites in the petition the elements of a fraud claim, and alleges that Petitioner “has a good faith belief” that Registrant was not using its MONEY POWER RESPECT ENTERTAINMENT mark in connection with online retail sales services listed in the registration. See Petition to Cancel, ¶15. Based on this “good faith belief” Petitioner concludes that Registrant knowingly made a material misrepresentation to the USPTO, and thereby committed fraud.

Petitioner's allegations are clearly not sufficient under the heightened pleading standards for a claim based on fraud. Petitioner's fraud claim is apparently based on a representation by Registrant to the USPTO that Registrant was using the MONEY POWER RESPECT ENTERTAINMENT mark on all of the "goods" listed in Class 35 when it submitted its Statement of Use. However, Petitioner has not alleged a single fact in support of its allegations that Registrant engaged in fraudulent conduct before the USPTO.

Petitioner's failure to allege in the petition any facts upon which its "good faith belief" is founded leaves the petitioner's fraud claim fatally flawed. *See e.g. W.R. Grace & Co.* 195 USPQ at 672 (the conclusory and general allegation of "upon information and belief, material fraud was knowingly and willfully perpetrated on the Patent and Trademark Office by Respondent by the misrepresentation of relevant and material facts regarding the purported evidence of trademark usage in the Combined Affidavits Under Sections 8 and 15..." was found to be insufficient to support a fraud claim).

Petitioner baldly speculates that Registrant made a material misrepresentation to the USPTO but does not identify any of the critical facts surrounding this alleged material misrepresentation, including the who, what, where, when, why and how this material misrepresentation occurred. Indeed, Petitioner's inadequate allegations state that Registrant was not using the mark on all of the listed "goods," when the registration at issue in this proceeding involves online retail store services.

In sum, there are no facts supporting the fraud claim, and a fraud claim cannot be sustained on mere "good faith belief" *See W.R. Grace & Co.* 195 at 672. Therefore, Petitioner's allegations utterly fail to adequately state a claim for fraud, and that claim should be dismissed.

Prayer for Relief

WHEREFORE, Registrant respectfully requests that the Trademark Trial and Appeal Board enter judgment in its favor, and against Petitioner and dismiss the cancellation proceeding with prejudice.

Respectfully submitted

/Jenny T. Slocum/

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Date: August 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss the Petition to Cancel is being filed electronically with the U.S. Patent and Trademark Office and is forwarded this 7th day of August, 2014 to Petitioner by first class mail, postage prepaid and addressed to:

Lauri S. Thompson
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400N
Las Vegas, NV 89169

/Jenny T. Slocum

Jenny T. Slocum

PHOENIX 59430-2 159056v2

)	
MAYWEATHER PROMOTIONS, LLC,)	
)	Cancellation No.: 92058893
Petitioner,)	
)	Registration No.: 3565960
v.)	
)	
BRANCH, CAHLEB, JEREMIAH, LLC.)	Mark: MONEY POWER RESPECT
)	ENTERTAINMENT
)	
Registrant.)	
)	

I, Cahleb J. Branch, under penalty of perjury declare as follows:

- [EMAIL LIST](#)
[SIGN UP](#)

[HOME](#)
[GEAR](#)
[SERVICES](#)
[CLIENTS](#)
[TESTIMONIALS](#)
[CONTACT](#)

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• JUST HEARD "PAPER" BY ON CC:

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5. Another example of MPRE's use of its MONEY POWER RESPECT ENTERTAINMENT mark includes the following concert promotion poster for an event featuring the artist Lil Debbie.

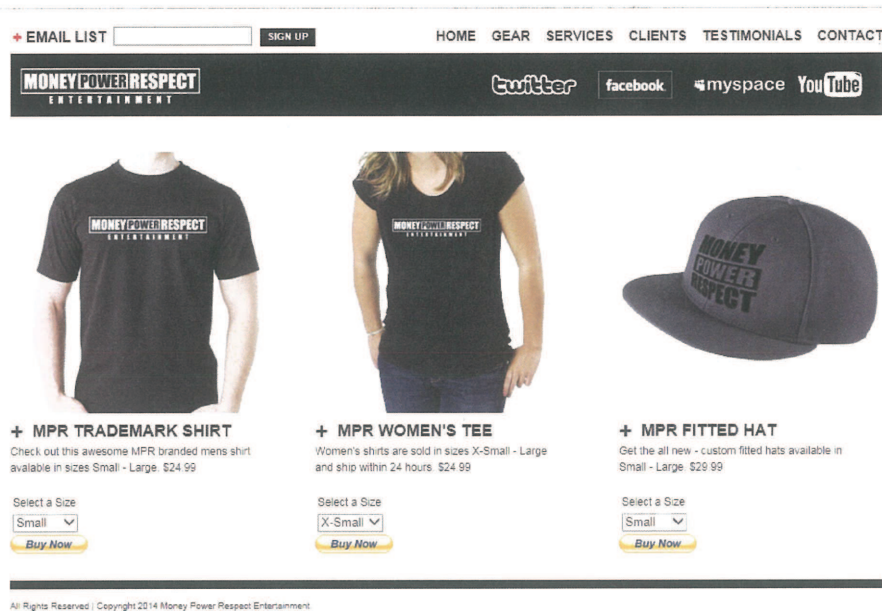


6. In addition to the promotional services provided to artists, MPRE also has offered retail sales through its on-line presence since March 2008.
7. Around March 2008, I first advertised the online retail sale of clothing on a MySpace page I operated under the Money Power Respect Entertainment name, which was located at the MySpace address www.myspace.com/moneypowerrespectent.
8. A photograph of a t-shirt that was available and sold through the MySpace retail page is depicted below:



9. The t-shirt shown in Paragraph 8 above, served as advertisements for MPRE's MySpace page and MONEY POWER RESPECT ENTERTAINMENT online retail store.
10. Through MONEY POWER RESPECT ENTERTAINMENT online retail store on its MySpace page, MPRE sold various clothing items until September, 2008.
11. In May 2008, MPRE launched its own MONEY POWER RESPECT ENTERTAINMENT Internet website, accessible at the following domain names: www.mprent.net; and www.moneypowerrespectentertainment.com.
12. The website had an on-line retail store selling clothing. Users could select a clothing item for purchase via the website.
13. Attached hereto as Exhibit 2 are representative images of some of the clothing offered for sale via the MONEY POWER RESPECT ENTERTAINMENT website and through events that MPRE has hosted or otherwise sponsored.
14. From September 2008 through September 2011, users purchased clothing from the MONEY POWER RESPECT ENTERTAINMENT website via a click-here-to-purchase option. In September 2011, MPRE redesigned its website.
15. The re-designed website came online in the same month, but without the "click-here-to-buy" merchandise component. Customers would order t-shirts from the website via email inquiry.

16. MPRE redesigned portions of the MONEY POWER RESPECT ENTERTAINMENT website again in May 2014 and at this time, MPRE added the "buy now" component to the MONEY POWER RESPECT ENTERTAINMENT website and it is there currently, as seen in the screenshot below:



17. As shown above in Paragraph 15, users may purchase t-shirts and hats via the MONEY POWER RESPECT ENTERTAINMENT website by clicking on the "buy now" button. The MONEY POWER RESPECT ENTERTAINMENT mark is used prominently on the MONEY POWER RESPECT ENTERTAINMENT website.
18. MPRE has expended significant resources in promoting its MONEY POWER RESPECT ENTERTAINMENT mark since 2008.
19. My business that I operate under the MONEY POWER RESPECT ENTERTAINMENT mark is well known in the talent booking industry. Attached hereto as Exhibit 3 is an article about MPRE that appeared in the *Phoenix New Times* on July 12, 2011.
20. At no point in time have I abandoned the MONEY POWER RESPECT ENTERTAINMENT mark for any of the services listed in U.S. Trademark Registration 3565960 and I have no intent to abandon the mark for any of these services, as demonstrated by the current and ongoing use of the mark for the MPRE business.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 26, 2014

Cahleb J. Branch

Page 1 of 1

8/6/2014

EXHIBIT 2



Exhibit 3

Phoenix - Music - Up on the Sun - Print Version

Page 1 of 3



Money Power Respect Entertainment Pushes Local Hip-Hop on a Large Scale

By Niki D'Andrea

Published Tue., Jul. 12 2011 at 9:00 AM



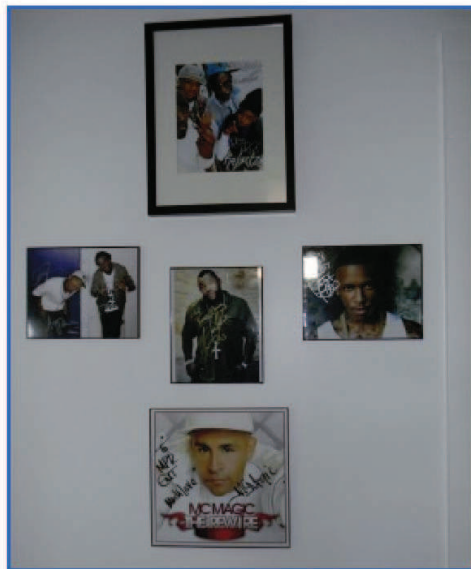
Cahleb Branch, head of Money Power Respect, works at his desk.

How much does it cost to book GZA from Wu-Tang Clan? Or Lil Jon? Or Nicki Minaj?

Cahleb Branch knows, because his company, Valley-based [Money Power Respect Entertainment](#), books international shows for them, among a slew of other well-known hip-hop artists. But beyond that, the five year-old company's established an innovative, all-encompassing business model for *local* hip-hop acts. Branch puts Phoenix acts in opening slots for national acts; handles merchandise production, promotions, video, and graphic design; installed a state-of-the-art recording studio at the MPR offices in Old Town Scottsdale; and works hand-in-hand with the ASU Herberger School of Music to procure interns and get feedback on local artist releases.

"It's a well-oiled machine that we're building," Branch says.

There are four local hip-hop acts on the MPR roster: [Cut Throat Logic](#), [The New F-O's](#), [Mathmadix](#), and [The Mob Fam](#). Over the past few years, Branch has booked his bands to open for artists like Young Buck,



The wall in Branch's office displays some of his favorite signed photos.

Too \$hort, and KRS-One (the latter two have also recorded on tracks with Cut Throat Logic). There's a whole process in place when it comes to new albums. When one of the MPR artists records a new record, Branch brings it to Dr. Richard Mook at ASU's Herberger School of Music, who then lets his students review the albums for extra credit. Branch says the student feedback also helps determine the final song list on the albums.

Once an album's released or a show's booked, MPR sends out a street team to plaster areas with fliers and posters. But they also reinforce promotions online and through phone apps. "It's looked upon as guerrilla marketing," Branch says. "If you're on the freeway and see a poster, or you see a flier at a coffee shop, then you go online and find things on Facebook, it reinforces."

MPR uses technology like the Moby Chip, which allows people to take a photo of a digital stamp and link to content online through their phones. "We're

embracing the technology completely," Branch says. "We basically catch the consumer where they shop or eat or hang out."



Engineer J-Beam works on a drum beat in one of the MPR studios.

In January, the company moved into some swank offices in Scottsdale, which include a recording studio (complete with reel-to-reel and digital equipment, twin turntables, and a separate vocal booth), and a full apartment for visiting music artists to stay in. The lobby includes leather couches and a giant, flat-screen plasma TV. When we visited the offices, the TV showed a promotional video for MPR that included props from Rick Ross and Warren G.

All they need now is a new website, which Branch says is in the works and will launch at www.mprent.com soon. The site will include a point of contact for booking acts, as well as MPR's other services, which Branch says are open to the public (but the posh offices are not; appointments are required). "Being on the waterfront, in walking distance from shopping and nightlife, is wonderful," Branch says of the office location. "If you sit in the office and look through the blinds, it's easy to close deals on the view alone."

